

### **REMARKS**

This response is intended as a full and complete response to the final Office Action mailed January 6, 2009. In the Office Action, the Examiner notes that claims 1-19 are pending and rejected.

In view of the following discussion, Applicants submit that all of the claims now pending are in allowable form.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

### **35 U.S.C. §103(a) Rejection of Claims 1-19**

The Examiner has rejected Claims 1-19 under 35 U.S.C. §103(a) as being unpatentable over Knudson et al. U.S. Patent No. 6,016,141, hereinafter "Knudson," in view of Hendricks et al. U.S. Patent No. 6,201,536, hereinafter "Hendricks," and further in view of Funahashi et al. U.S. Patent No. 5,691,915, hereinafter "Funahashi." The rejection is respectfully traversed. Applicants respectfully direct the Examiner to Applicants' prior responses. Further to and supplementing the arguments provided in those responses, Applicants provide the following comments and observations:

With respect to Knudson:

- (1) Knudson fails to disclose or suggest "providing a set of more than two on-demand programs" as recited in claim 1. As noted by the Examiner, Knudson "fails to explicitly teach providing VOD or on-demand program services." As will be discussed in more detail below with respect to Hendricks, to the extent that Hendricks provides VOD or on-demand program services, such as services are not provided within the context of packages.

(2) Knudson fails to disclose or suggest "providing a user interface having the subset as a selectable object" as recited in claim 1. Specifically, Knudson does not provide a user interface in which a selectable object representative of a subset of on-demand programs may be selected. Rather, Knudson uses a standard program guide display (i.e., the grid of television programming listings described with respect to Fig. 2 of Knudson). Using this program guide display, a specific program (i.e., one program and not a subset of programs) is selected from the grid. It is critical to note that the program guide of Knudson defines for each program a respective channel and time slot. These programs are broadcast programs rather than VOD or on-demand programs.

Upon selecting a broadcast program via the Knudson program guide display, a subsequent information screen may be displayed such as described with respect to Figs. 7-9 of Knudson. The subsequent information stream is used to assist a user in purchasing the program. However, the subsequent information screen and other information screens are simply not equivalent to the claimed "selectable object" of the instant patent application. That is, to the extent that the Examiner might equate a program guide display grid coordinate with the claimed "selectable object," it must be noted that this grid coordinate only allows for the selection of one program and not a "subset having at least two on-demand programs" as claimed.

(3) Knudson fails to disclose or suggest "immediately providing said selection in its entirety if a price of said selection is zero or providing an option to purchase the selection a la carte if said price of said selection is non-zero" as recited in claim 1.

First, the Examiner seems to equate impulse purchasing with "immediately providing" as claimed. This is incorrect. Knudson allows impulse purchasing of some NVOD/PPV programming. The purchasing of programming has nothing to do with the providing of purchased programming to a user. That impulse purchasing is allowed simply does not mean that programming so purchased is immediately provided to a user. The purchased programming of Knudson, whether impulse purchased or otherwise, is only available at a scheduled broadcast time.

Second, Knudson simply cannot immediately provide the entirety of anything, since Knudson does not provide on-demand programming. If the programming is currently being broadcast, then Knudson may provide access to the programming at a current broadcasting point (i.e., a portion of the programming is unavailable and therefore the entirety of the programming is not provided). If the programming is not currently being broadcast, and the programming will be provided according to its scheduled broadcast time (i.e., the programming is not provided immediately).

With respect to Hendricks:

(1) Contrary to the Examiner's assertion (page 3 of the Office Action), Hendricks does not provide program packages upon request from subscribers. Moreover, any packages of programming provided by Hendricks do not include VOD programming.

Hendricks uses the terms "package," "packaging" and "packages" in a manner that does not support the Examiner's position. Specifically, Hendricks groups television programs by timeslots, broadcast television channels by type and/or advertisements according to demographic data. The grouped television programs, channels or advertisements are then encoded in a standard manner and broadcast towards subscribers. Subscribers may view an individual program within a package of programming when the individual program is broadcast. Such a selection may be made in a standard manner by selecting the broadcast channel of the individual program using a program guide. In short, programming packages or advertising packages are not provided in response to a subscribe request, they are provided in a standard broadcast manner. Moreover, the programming packages do not include VOD programming.

(2) Whether or not the Hendricks arrangement provides on-demand or VOD programming is not determinative. Hendricks clearly envisions a network manager for cable television system head ends that performs multiple functions. One of those functions is providing a VOD program in response to a user request for the program. Another function is to provide broadcast programming that a user may view. The

broadcast programming is packaged in a manner that makes it easier for a user to select the type of programming the user enjoys (e.g., packaging similar types of programming together such as sporting events). These are two separate functions. To the extent that the Examiner wishes to construe the packaging of Hendricks as anything like the claimed invention, it is clear that such packaging has nothing to do with VOD and, therefore, nothing to do with the claimed invention.

With respect to Funahashi:

- (1) The Examiner notes that Knudson as modified by Hendricks "fails to explicitly teach receiving a selection of the subset of the multiple programs and immediately providing the selection of the price of the selection is zero."
- (2) Contrary to the Examiner's assertions, Funahashi does not provide "pay programs free of charge" as asserted by the Examiner. Funahashi provides a data transmission device adapted to give a data selection unit partial access to data so that a user of the data selection unit may decide whether or not to buy the rest of the data, such as a movie or karaoke song. The partial access is free. The rest of the data must be purchased. This is entirely different than the claimed invention.

Summary:

The cited references alone or in any allowable combination simply fail to supply the teachings necessary to support the rejection. As also noted in prior office action responses, various portions of the references teach away from any combination that would disclose or suggest the claimed invention.

As the Examiner well knows, the standard for examination requires that the totality of the references (and claim) be considered when asserting an obviousness rejection. The Examiner cannot rely on what he considers to be the "gist" of the invention, since such reliance ignores the claimed invention as a whole. Similarly, the Examiner cannot rely on portions of the cited references which sound like they should

fit together when the cited references properly viewed as a whole do not fit together in a manner supporting the obviousness rejection. The present rejection relies upon disparate and disconnected portions of the various references to purportedly teach different pieces of the claimed invention. This is not the appropriate standard for review. Moreover, even using the references in this manner fails to result in a teaching or suggestion within the references of the claimed invention.

In view of the above comments and Applicants' prior responses, it is respectfully submitted that independent claim 1 is patentable under 35 U.S.C. §103 over any allowable combination of Knudson, Hendricks and Funahashi. Claims 2-19 depend, either directly or indirectly, from independent claim 1 and recite additional limitations thereof. As such, and at least for the same reasons as discussed above, these dependent claims also are patentable over Knudson, Hendricks and Funahashi under 35 U.S.C. §103. Therefore, the Examiner is respectfully requested to withdraw the rejection.

Further with respect to claim 13, there is absolutely no teaching or suggestion in any of the references of the claimed "wherein at least one particular package is user defined to enable a personal subscription on demand (SOD) service." Even the programming packages of Knudson are not user defined. Rather, the NVOD/PPV programming offerings of Knudson are either individually purchasable or part of one or more prepackaged offerings. If part of a prepackaged offering, the user may purchase the prepackaged offering including the NVOD/PPV programming offering. There is no step of "packaging" per se (and certainly no user defining of packages); rather, Knudson merely allows for the purchase of NVOD/PPV programming within the context of existing packages.

Thus, it is respectfully submitted that claim 13 is also patentable for the additional reasons discussed above. Moreover, claims 18 and 19 depend from claim 13 and recite additional limitations there from. Thus, these claims are also patentable for the same reasons discussed above with respect to claim 13.

**CONCLUSION**

In view of the foregoing, Applicants believe that this application is in condition for allowance. Entry of this response, reconsideration of this application, and allowance are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq. at (732) 842-8110 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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